

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 10, 2003

D041458 In re the Marriage of Brand

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur of ordered to issue immediately. Each party to bear own costs on appeal.

D042048 In re Karla C., a Juvenile

D042060 In re Karla C., a Juvenile

The March 13, 2003 order is reversed. The matter is remanded to the juvenile court for its acceptance of the Agency's filing of the notice it sent the Blackfeet Tribe and determination of whether the notice was adequate and proper. If the notice is sufficient, and if as a result of the tribe's nonresponse the court determines the ICWA is inapplicable, it is to reinstate the order. If the notice is insufficient, the court must order the Agency to send a new notice to the Blackfeet Tribe, and to file a copy of the notice, and return receipt and response, if any, with the court. CERTIFIED FOR PUBLICATION
McConnell, P.J.; We Concur: Benke, J., Nares, J.

D040763 In re The Marriage of Zamos

The order is affirmed. McDonald, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D. E. Moore

D0490301 People v. Flores

Cause called on merits. Laura G. Schaefer, Esq. argued for appellant. Jeffrey J. Koch, Deputy Attorney General argued for respondent. Ms. Schaefer replied. Cause submitted.

D040767 Romo v. Amedex Insurance Company

Cause called on merits. Chris Yturralde, Esq. argued for appellant. Brian Worthington, Esq. argued for respondent. Mr. Yturralde replied. Cause submitted.

Court recessed at 9:48 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

D040426 People v. Sexton

Cause called on merits. Russell S. Babcock, Esq. argued for appellant. Susan Miller, Esq. argued for respondent. Cause submitted.

Court recessed at 10:10 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
November 10, 2003 (Continued)

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre
Clerk: D. E. Moore

D040282 Mercury Casualty Company v. Maloney

Cause called on merits. John Taylor, Esq. argued for appellant. Benjamin C. Bunn, Esq. argued for respondent. Mr. Taylor replied. Cause submitted.

D040361 A.B.H. Investments, Inc., et al. v. Narven Enterprises, Inc., et al.

Cause called on merits. James c. Mitchell, Esq. argued for appellant. David R. Clark, Esq. argued for respondent. Mr. Mitchell replied. Cause submitted.

D039474 People v. Futrell

Cause called on merits. Cynthia M. Sorman, Esq. argued for appellant. Lise Jacobson, Deputy Attorney General argued for respondent. Ms. Sorman replied. Cause submitted.

Court recessed at 2:36 p.m. and reconvened at 2:46 p.m.

D040783 Kiss v. Titus Interactive, S.A.

Cause called on merits. Dale R. Larabee, Esq. argued for appellant. Dennis Windsor Beech, Esq. argued for respondent. Cause submitted.

D041023 People v. Johnson

Cause called on merits. Beatrice C. Tillman, Esq. argued for appellant. Marvin Mizell, Deputy Attorney General argued for respondent. Ms. Tillman replied. Cause submitted.

Court recessed at 3:20 p.m. until Wednesday, November 12, 2003 at 9:00 a.m.

D040579 Brenner v. City of El Cajon

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D041247 People v. Ventittelli

D042322 In re Ventittelli on Habeas Corpus

The pending petition for writ of habeas corpus, In re Dino Rocco Ventittelli, D042322, is consolidated with the pending appeal, People v. Ventittelli, D041247, for disposition.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 12, 2003

D040220 Salco Espresso & Restaurant Systems, Inc. v. B.H. Gold Insurance Agency, Inc.

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Haller, J.

D039970 People v. Hamilton

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Nares, J.

D041376 People v. Esayian

The petition is denied. Justices Huffman and O'Rourke concur in the denial; Justice McIntyre would grant.

D040279 Martinez et al. v. Metabolife International, Inc.

The judgment is affirmed. Plaintiffs shall recover their costs on appeal. CERTIFIED FOR PUBLICATION. McDonald, J.; We Concur: Huffman, Acting P.J., Nares, J.

D040652 People v. Butler

The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., Benke, J.

D040372 People v. Castillo

Castillo's conviction on count 3 for receiving stolen property is reversed and the court is directed to amend the abstract of judgment accordingly and forward it to the California Department of Corrections. In all other respects the judgment is affirmed. O'Rourke, J.; We Concur: Haller, Acting P.J., McDonald, J.

D039451 BRH-Garver, Inc. et al. v. City of San Diego

The judgment and order are affirmed. McConnell, P.J.; We Concur: Benke, J., O'Rourke, J.

D040592 People v. Serrato

We order the one-year enhancement imposed pursuant to section 667.5, subdivision (b) to be stricken and the trial court is instructed to amend the abstract of judgment and forward a certified copy to the Department of Corrections. The judgment, as modified, is affirmed. McConnell, P.J.; We Concur: Haller, J., McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D. E. Moore

D041151 People v. Jordan

Cause called on merits. Arthur Martin, Esq. argued for appellant. Pam Ratner, Deputy Attorney General argued for respondent. Mr. Martin replied. Cause submitted.

D040811 Andrade v. City of San Diego

Cause called on merits. Natalia Smith, Esq. argued for appellant. Sim Von Kalinowski, Esq. argued for respondent. Ms. Smith replied. Cause submitted.

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November 12, 2003 (Continued)

Court recessed at 9:30 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion

D041046 Durels v. California Sheet Metal Works, Inc.

Cause called on merits. Bruce Cornblum, Esq. argued for appellant. Jean D. Fisher, Esq. argued for respondent. Mr. Cornblum replied. Cause submitted.

Court recessed at 10:06 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D040393 Jennings v. Palomar Pomerado Health Systems, Inc., et al.

Cause called on merits. Kendra J. Hall, Esq. argued for appellant/cross-respondent. Curtis A. Cole, Esq. argued for respondent, Palomar Pomerado Health Systems, Inc. Mr. Cole replied. Cause submitted.

Court recessed at 10:38 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller
Clerk: D. E. Moore

D040449 People v. Dulyea

Cause called on merits. Scott M. Rand, Esq. argued for appellant. Lynne McGinnis, Deputy Attorney General argued for respondent. Mr. Rand replied. Cause submitted.

D039934 People v. Culver

Cause called on merits. Gary Nelson, Esq. argued for appellant. Ivy Fitzpatrick, Deputy Attorney General argued for respondent. Mr. Nelson replied. Cause submitted.

D040556 Bank of America, N.A. v. One San Diego Associates et al.

Cause called on merits. Charles Bird, Esq. argued for appellant. Janice P. Brown, Esq. argued for respondent. Mr. Bird replied. Cause submitted.

Court recessed at 2:34 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D040643 People v. Ferguson

D042137 In re Ferguson on Habeas Corpus

Causes called on merits. Richard W. Weinthal, Esq. argued for appellant. Jim Dutton, Deputy Attorney General argued for respondent. Mr. Weinthal replied. Cause submitted as to appeal ONLY, D040643.

D039723 Lamas v. Clinica De Ciruglia Cosmetica Intergral, et al.

Cause called on merits. Jeffry A. Miller, Esq. argued for appellant. John Steven Lopez, Esq. argued for respondent. Mr. Miller replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Court recessed at 3:32 p.m. until Thursday, November 13, 2003 at 9:00 a.m.

D040249 North American Specialty Insurance Company v. St. Paul Mercury Insurance Company

The judgment on the pleadings is reversed and the matter remanded with directions that the superior court enter an order denying St. Paul Mercury Insurance Company's motion for judgment on the pleadings. The parties shall bear their own costs on appeal. O'Rourke, J.; We Concur: McConnell, P.J., Haller, J.

D041791 J.P. Morgan & Co., Inc., et al. v. Superior Court of San Diego County/Heliotrope General, Inc., et al.

Let a writ of mandate issue directing the trial court to vacate its order of class certification and to enter a new order denying the motion. CERTIFIED FOR PUBLICATION. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D041783 Global Minerals & Metals Corporation v. Superior Court of San Diego County/National Metals, Inc. et al.

Let a writ of mandate issue directing the trial court to vacate its order of class certification and to enter a new order denying the motion. Each party to bear its own costs. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

D041979 Ocwen Fedral Bank FSB v. Martin et al.

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. Each party to bear their own costs on appeal.

D042967 Melody J. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Melody J. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case as to Melody J. is dismissed. Response to Shaw F.'s petition for writ of mandate is due 10 days from the date of this order.

D042957 Deanna E. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Deanna E. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D042974 Angel H. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Roy T. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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November 12, 2003 (Continued)

D041234 People v. Belcher

It is ordered that the opinion filed on October 15, 2003, be modified as follows:
On page 4, last paragraph, line 2, the word "possible" is change to "probable" so that the sentence reads:
In any case, a remand for resentencing is unnecessary when it is reasonably probable that the defendant would have received the same sentence absent the error. There is no change in judgment.

D042471 In re Gabriel M., a Juvenile

The judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., Nares, J.

D041179 In re Alyssa F., a Juvenile

The request to modify the opinion filed on September 19, 2003, and certified for partial publication on October 20, 2003, is denied. The request to take judicial notice is denied. The letter filed October 28, 2003, has been reviewed and no further action will be taken.

D041245 People v. Gerber

Counts 2 and 3 are reversed. In all other respects the judgment is affirmed.

D041853 In re Marriage of O'Brien

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

D042133 County of San Diego v. Abdullah

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

D042292 In re Nicolas W., a Juvenile

The judgments are affirmed. Huffman, J.; We Concur: McConnell, P.J., Haller, J.

D039503 People v. Mayta

All proceedings in this cause have permanently abated by reason of appellant's death. The Superior Court is directed to enter its order to that effect in the record. There no longer being an appellate objective, the appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 13, 2003

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and James McIntyre
Clerk: D. E. Moore

D040857 Burke v. Department of Corrections

Cause called on merits. No appearance by Mr. Burke, appellant in pro per. No appearance by Mr. Stump, Deputy Attorney General. Cause submitted.

D040444 Farfara v. Miramontes

Cause called on merits. James F. Pokorny, Esq. argued for appellant. Sarah N. Baker, Esq. argued for respondent. Mr. Pokorny replied. Cause submitted.

D042089 In re Leah P., a Juvenile

Cause called on merits. Lisa DiGrazia, Esq. argued for appellant. Janice Casillas, Deputy County Counsel argued for respondent. M. Elizabeth Handy, Esq. was present in oral argument for the child, but had nothing to add to the argument. Ms. DiGrazia replied. Cause submitted.

Court recessed at 9:45 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D042607) In re Rachel M. v. Superior Court

D041731) In re Rachel M., a Juvenile

Cause called on merits. Joseph Tavano, Esq. argued for appellant. Janice Casillas, Deputy County Counsel argued for respondent. Linda Fabian, Esq. argued for the minor. Mr. Tavano replied. Ms. Fabian replied. Cause submitted.

Court recessed at 10:40 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron
Clerk: D. E. Moore

D039873 Pierson v. Pierson

Cause called on merits. Edward Watkins, Esq. argued for appellant. Sharron Voorhees, Esq. argued for respondent. Mr. Watkins replied. Cause submitted.

Court recessed at 1:57 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
November 13, 2003 (Continued)

D040331) In re Anthony J., a Juvenile

D041558) In re Anthony J. on Habeas Corpus

Cause called on merits. John Evan Edwards, Esq. argued for appellant. Ivy Fitzpatrick, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 2:24 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D041305 Alvarado v. County of Imperial

Cause called on merits. Michael T. Gibbs, Esq. argued for appellant. Laurence F. Haines, Esq. argued for respondent. Mr. Gibbs replied. Cause submitted.

D041275 Ridgway et al. v. Diaz et al.

Cause called on merits. K. Martin White, Esq. argued for appellant. Alan H. Burson, Esq. argued for respondent. Mr. White replied. Cause submitted.

Court recessed at 3:21 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion

D040083 Larios-Rojas v. Central Union High School District et al.

Cause called on merits. No appearance by appellant's counsel. Lisa Cooney, Esq. argued for respondent. Cause submitted.

Court recessed at 3:27 p.m. until Monday, November 17, 2003 at 9:00 a.m.

D041325 In re Luis B., a Juvenile

The order denying a motion to defer entry of judgment is reversed. The matter is remanded. Aaron, J., We Concur: McDonald, J., O'Rourke, J.

D041244 People v. Hill

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 13, 2003 (Continued)

D042864 Tatro-Romero v. Metabolife International, Inc.,

Plaintiff Christine Tatro-Romero's appeal from the May 19, 2003 order granting defendant's motion for attorney fees is dismissed as untimely. The court presumes the trial court's service of notice of the appealed order by facsimile transmission (fax) on May 19, 2003 was authorized by the parties under California Rules of Court, rule 2008(b). (Evid. Code, section 664.) The court is of the view that the trial court's fax service of the order triggered the 60-day period for filing a notice of appeal from the order under California Rules of Court, rule 2(a)(1). (See California Rules of Court, rule 2060(a)(1) & (b)(3)(C); Code Civ. Proc., section 1010.6, subd. (a)(6).) Accordingly, the last day to file a timely notice of appeal from the order was July 18, 2003. Plaintiff's notice of appeal was filed on August 22, 2003. If a notice of appeal is filed late, the reviewing court is without jurisdiction to proceed and must dismiss the appeal. California Rules of Court, rule 2(e); *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.)

The appeal is also dismissed under California Rules of Court, rule 1(f)(3) for failure to file a civil case information statement.

D040805 People v. Shufelt

The judgment is affirmed. McConnell, P.J.; We Concur: Haller, J., O'Rourke, J.

D043052 Tran v. Thanh

Pursuant to California Rules of Court, rule 8, the appeal filed September 11, 2003, is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 14, 2003

Court convened at 10:00 a.m. in **IMPERIAL COUNTY.**

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald
Clerk Administrator: S. Kelly

D039883 Loera v. Imperial County Sheriff's Department

Cause called on merits. Carolyn Chapman, Esq. argued for appellant. Michael T. Gibbs, Esq. argued for respondent. Cause submitted.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D041938 In re Robinson on Habeas Corpus

Matter called on merits. Carmela F. Simoncini, Esq. argued for petitioner. Chris Kowalski, Deputy District Attorney argued for real party in interest. Matter submitted.

D041122 Chell v. Singh

Cause called on merits. Ann M. Zimmerman, Esq. argued for appellant. Mitch Driskill, Esq. argued for respondent. Cause submitted.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion

D040819 Dez Construction v. Calexico Unified School District

Cause called on merits. F. Beard Hobbs, Esq. argued for appellant. Joseph James Huprich, Esq. argued for respondent. Cause submitted.

Court adjourned at 12 noon.

D041310 Guardado v. Commercial Conservancy #1 et al.

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issued immediately. Each party to bear their own costs on appeal.

D039428 People v. Perez

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., Aaron, J.

D042321 In re Marriage of Lasher

Upon written request filed by appellant, the appeal is dismissed.

D042692 M.C. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. Haller, J.; We Concur: McConnell, P.J., Irion, J.

D043179 In re Bowers on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 14, 2003 (Continued)

D036712 Miller et al. v. MTR Development Corporation

The Court has been advised that the bankruptcy case of Appellant MTR Development Corporation has been closed. This court's stay order of December 13, 2000, is accordingly vacated. For the reasons set forth in this court's dismissal order of December 13, 2000, the appeal is now dismissed as to Appellant MTR Development Corporation.